

**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR (2018–  
2022) (Remand)

**MUSIC CHOICE’S OPPOSITION TO SOUNDEXCHANGE’S EXPEDITED REQUEST  
FOR CLARIFICATION**

Music Choice respectfully submits this Opposition and Objection to SoundExchange’s wholly improper so-called “Expedited Request for Clarification of July 29, 2021 Order” (the “SX Motion”), filed earlier today. The SX Motion is improper on several independent grounds. First of all, it does not seek clarification of anything actually in the Judges’ July 29 Order. Instead it is a motion seeking an extension for SoundExchange to avoid filing its responsive remand brief on today’s filing date. SX Motion at 2. But SoundExchange did not comply with any of the Judges’ rules regarding motions for an extension of time. 37 C.F.R. § 303.7 (b)(1)-(6).

Moreover, there are no provisions in the Judges’ rules that allow a party to unilaterally file a motion like this on an “emergency” basis, seeking an immediate ruling without providing the other party with any normal time to respond to the motion. SoundExchange raised the question of jointly seeking an extension with Music Choice yesterday afternoon, and this morning Music Choice confirmed with SoundExchange that Music Choice fully intended to file its brief today and would not agree to jointly request the extension sought in the SX Motion. Music Choice sought an extension weeks ago, back when such an extension would have actually yielded efficiencies and saved Music Choice from duplicative briefing effort. SoundExchange

refused to consent to that request, forcing Music Choice to file its motion with the required notice of SoundExchange's refusal to consent. But then SoundExchange did not actually file any opposition, and never even had the courtesy to inform Music Choice or the Judges that it was not actually opposing the motion. This led to a wholly unnecessary two week delay, which in turn delayed the Judges' consideration of Music Choice's motion, which never got decided.

Given that its request for an extension remained unresolved, Music Choice had no choice but to proceed with drafting its brief and is preparing to file those papers today. Now that all the work is done, SoundExchange has apparently decided there is some strategic advantage to delaying today's filing date. It seems to be seeking to preserve an ability to revise its arguments depending on whether Music Choice ultimately gets access to the various documents that SoundExchange has improperly withheld. Even if SoundExchange had followed any of the Judges' rules in seeking an extension, it has no grounds to support such an extension. SoundExchange has always had these documents. The delay in ruling on Music Choice's motion to compel – which delay was created by SoundExchange's own serial misrepresentations to Music Choice and the Judges about the documents they withheld – only prejudiced Music Choice. It is frankly outrageous that SoundExchange would seek to use prejudice to Music Choice that it created as a justification to seek some odd strategic advantage for itself.

As for SoundExchange's throwaway alternative request for the Judges to provide "guidance" on whether the responsive briefs may be supplemented later and what the scope of such briefs would be, that request is far from ripe. It makes no sense to evaluate such issues until after the Judges fully resolve Music Choice's motion to compel.

Apparently there is no end to SoundExchange's gamesmanship. Music Choice should not have had to waste its time responding to this fake "emergency motion" on the very day

responsive briefs are due. It was improperly filed and should be ignored. But if the Judges are going to consider it at all, they should deny it.

Dated: July 30, 2021

Respectfully submitted,

/s/ Paul M. Fakler

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# Proof of Delivery

I hereby certify that on Friday, July 30, 2021, I provided a true and correct copy of the MUSIC CHOICE'S OPPOSITION TO SOUNDEXCHANGE'S EXPEDITED REQUEST FOR CLARIFICATION to the following:

American Federation of Musicians of the United States and Canada, represented by Steven R. Englund, served via ESERVICE at [senglund@jenner.com](mailto:senglund@jenner.com)

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Signed: /s/ Paul Fakler